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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/805,681	03/19/2004	LaShurya M. Wise	005127.00219	8555
22909	7590	05/05/2006	EXAMINER	
BANNER & WITCOFF, LTD. 1001 G STREET, N.W. WASHINGTON, DC 20001-4597			SUTTON, ANDREW W	
			ART UNIT	PAPER NUMBER
			3765	

DATE MAILED: 05/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/805,681	WISE ET AL.	
	Examiner	Art Unit	
	Andrew W. Sutton	3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 March 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 46,47,49,54 and 56 is/are pending in the application.
- 4a) Of the above claim(s) 46,47 and 49 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 54 and 56 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 March 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>3/14/06, 6/23/05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 46, 47 and 49, drawn to an article of apparel with a yarn is capable of dimensionally transforming due to water and one that does not, classified in class 2, subclass 69.
- II. Claims 54 and 56, drawn to a method including two dimensionally transformable yarns, classified in class 2, subclass 1

Inventions I and II are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different designs, modes of operation, and effects (MPEP § 802.01 and § 806.06). In the instant case, the different inventions can be determined due to Group I claiming a fabric with a demensionally transformable yarn and one that is not dimensionally transformable. Group II claims two yarns that both are dimensionally transformable upon exposure to water.

During a telephone conversation with Byron Kazara on 5/1/06 a provisional election was made without traverse to prosecute the invention of Group II, claims 54 and 56. Affirmation of this election must be made by applicant in replying to this Office action. Claims 46, 47 and 49 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Response to Arguments

Applicant's arguments with respect to claims 54 and 56 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 54 and 56 are rejected as best understood under 35 U.S.C. 102(b) as being anticipated by Imamichi (US 4,267,710). Imamichi discloses (abstract) a double-knit fabric composed of polyester and cotton fibers. The cotton yarn has a first degree of water absorbency and a first degree of dimensional-transformation upon exposure to water. The synthetic fibers have a second degree of water absorbency and a second degree of dimensional-transformation upon exposure to water. The fabric is a double knit as stated above, thus is mechanically manipulated. Fig. 3 shows the cotton yarn 3 to the rear of the synthetic yarns 1 and 2. Cotton is a fiber that is hydrophilic which means it absorbs water, which causes the diameter of the fiber to grow. When the water exposed to it, the hydrophilic yarn (cotton) would absorb water, thus increasing in size as stated above. This reaction modifies the first structure of the fabric to a second when exposed to water as claimed. The increased diameter of the cotton yarn would "project" nodes onto the surface of the fabric, as the cotton yarns would be larger in

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diameter thus pushing the synthetic yarns outward creating nodes. Both the natural and synthetic fibers contribute into the node formation.


Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hatch (Textile Science), Blore (US 3,626,714), Taylor (US 3,971,234), Yoon (US 5,809,806), and Hunneke (US 5,636,533) teach the state of the art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew W. Sutton whose telephone number is (571) 272-6093. The examiner can normally be reached on Monday - Friday 7:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John J. Calvert can be reached on (571) 272-4983. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


JOHN J. CALVERT
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700

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AWS

5/01/06